



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGIONS
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

AB-18J

FEB 28 2005

James Warner, Director
Industrial Division
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55153-4194

Re: Response to Official Comment on Signed Memorandum of Agreement for Delegation of Section 112 Standards

Dear Mr. Warner:

Thank you for the September 13, 2004, letter from Sheryl A. Corrigan submitting for the docket your position regarding the Mille Lacs Indian Reservation boundary in relation to the U.S. Environmental Protection Agency (U.S. EPA)-Minnesota Pollution Control Agency (MPCA) Memorandum of Agreement for the delegation by U.S. EPA to MPCA of the Clean Air Act's Section 112 program.

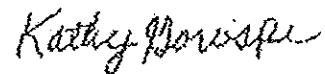
As we have stated in previous correspondence, the United States Department of Interior, through the Bureau of Indian Affairs and the Solicitor's Office, is responsible for making determinations regarding reservation boundaries. The Department of the Interior has taken the position that the boundaries of the Mille Lacs Reservation, as defined by the Band's Treaty of 1855, remain intact. We enclose two letters that set forth in detail the Solicitor's Office opinion and which U.S. EPA has consistently and publicly referenced when responding to questions regarding the boundary of the Mille Lacs reservation. The U.S. EPA relies upon the Solicitor's Office opinion in administering Federal environmental programs for the Mille Lacs reservation. Therefore, we must disagree with your characterization that the Mille Lacs Indian reservation is comprised solely of trust lands located within Kathio, South Harbor and Isle Harbor Townships. The U.S. EPA's position is that the Mille Lacs Reservation, as defined in the Band's Treaty of 1855, has not been diminished and that the area within this reservation remains "Indian Country" as that term is defined in 18 U.S.C. § 1151(a).

I agree that the ongoing disagreement between the U.S. EPA and MPCA regarding the boundary of the Mille Lacs Reservation is not suited to resolution in the context of this program delegation, and I appreciate your continuing efforts to work in partnership with U.S. EPA to further environmental protection in Minnesota.

Your most recent letter also cites United States v. Mille Lacs Band of Chippewa Indians, 229 U.S. 498 (1913), for the proposition that the Supreme Court ruled that the Nelson Act disestablished the Mille Lacs Reservation. That case, however, concerned whether the United States was liable for damages relating to the conveyance of lands within the Mille Lacs Reservation pursuant to the general land laws. That case did not address the precise issue of whether the Nelson Act disestablished the boundaries of the Mille Lacs Reservation.

If you have any further questions regarding this letter, please do not hesitate to contact Anthony Larson of my office at (202) 260-8106.

Sincerely,



Kathy Gorospe, Director
American Indian Environmental Office

Attachments

MLB 03417



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGIONS
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

FEB 26 2005

REPLY TO THE ATTENTION OF:

(AR-18J)

James Warner, Director
Industrial Division
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155

Dear Mr. Warner, *[initials]*

Enclosed is a signed copy of the Memorandum of Agreement (MOA) between the Minnesota Pollution Control Agency and the United States Environmental Protection Agency (EPA), Region 5, Air and Radiation Division. We wish to thank you for the hard work you and your staff put in to reach this agreement. We trust it will assist both the State and EPA in continuing the implementation of the air permit program. This MOA will be followed with the publication of a federal register notice announcing the agreement between our agencies. If you have any questions concerning this letter, the Memorandum of Agreement itself or its implementation, please contact Jennifer Darrow at (312) 886-6315.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Stephen Rothblatt".

Stephen Rothblatt, Director
Air and Radiation Division

Enclosure

A copy of your letter and this response will be placed into the docket for this Section 112 program delegation.

Please contact me if you have any further questions about this matter.

Sincerely yours,



Stephen Rothblatt, Director
Air and Radiation Division

Enclosures

cc: Scott Hansen
Director of Environmental Programs
Mille Lacs Band of Ojibwe

MEMORANDUM OF AGREEMENT
BETWEEN
THE MINNESOTA POLLUTION CONTROL AGENCY
AND THE U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 5
REGARDING
SECTION 112, CLEAN AIR ACT IMPLEMENTATION

INTRODUCTION

The purpose of this Memorandum of Agreement (MOA) is to provide joint procedures to facilitate federal delegation of authority to implement and enforce standards and the delegable general provisions promulgated by the United States Environmental Protection Agency (EPA) under Section 112, excluding Section 112(y), of the Clean Air Act as amended (Section 112) to the Minnesota Pollution Control Agency (MPCA). This MOA sets forth specific expectations and responsibilities of the MPCA and EPA and describes a formal procedure for delegating standards applicable to Part 70 sources. Both the MPCA and EPA recognize that timely delegation of Section 112 responsibilities is vital to implementation of both the Title V and Section 112 program. The parties to this agreement affirm their commitment to an effective state/EPA partnership, and agree to review this MOA, as the need arises.

SCOPE

The MPCA has requested, and EPA intends to grant, delegation of responsibilities for implementation and enforcement of emission standards and other requirements promulgated under Section 112 through the process set out in this MOA. The MPCA has not requested and, at this time, does not intend to request delegation of the accidental release program under Section 112(x). This MOA addresses only those provisions and responsibilities for which the MPCA has requested delegation.

The MPCA assumes primary responsibility for implementing the 112(l) program within its boundaries, except for Indian country.

BACKGROUND

Section 112 requires EPA to develop National Emissions Standards for Hazardous Air Pollutants for Source Categories (NESHAPs). Section 112(l) authorizes the Administrator to delegate the authority for the implementation and enforcement of standards promulgated under Section 112 to any state which applies for such delegation and which can demonstrate that it has in place a program which meets the criteria set forth in Section 112(l) and its implementing regulations at 40 CFR § 63.91. The Administrator has delegated the authority to approve state programs to the Regional Administrators.

Appendix C identifies the Section 112 standards promulgated by EPA, but not yet incorporated into Minnesota Rules. The implementation and enforcement of these standards will be delegated from EPA to the MPCA through the procedures described in this MOA.

Authority to implement and enforce future Section 112 standards will be delegated to the MPCA in accordance with this MOA. Additionally, the MPCA may in the future relinquish implementation and/or enforcement authority to EPA through procedures described in this MOA.

Delegation of each Section 112 standard means the delegation of the standard as promulgated by EPA unless the MPCA notifies EPA otherwise, either as specified in Part III, C. of the Procedures section of this agreement or within the alternative standard delegation procedures provided within Section 112 itself.

PROCEDURES FOR DELEGATION OF IMPLEMENTATION AND ENFORCEMENT AUTHORITY

To transfer delegation of implementation and enforcement authority, the MPCA and EPA agree to implement the following procedures:

- I. When authorizing construction of an air emissions source or facility, the MPCA issues a "combined" air emissions permit that establishes the conditions for both construction and operation of an air emissions facility. MPCA shall implement Section 112 standards pursuant to this MOA by including applicable Section 112 requirements in the Part 70 permit when issuing "combined" permits authorizing construction and operation. MPCA shall also include applicable Section 112 requirements in Part 70 operating permits when they are issued or revised.
- II. Prior to final promulgation of a Section 112 standard, EPA shall provide MPCA with any information it has regarding Minnesota sources that may be subject to such standard.
- III. The process for delegating implementation and enforcement following final promulgation by EPA of a Section 112 standard will be as described herein.
 - A. *Implementation Authority.* Upon first signature of this MOA, implementation authority is delegated as follows:
 1. The implementation of standards listed in Appendix A is delegated to MPCA in their entirety.
 2. The implementation of standards listed in Appendix B is delegated to MPCA with the exception of this MOA, except for the following standard:

Hazardous Waste Combustors, Subpart EEE

The MPCA may propose limited acceptance of delegation of a standard at any time in accordance with the procedures in Part D of this section.

- D. *Relinquishing Delegation Authority.* The MPCA may, upon written notification to EPA, relinquish the enforcement or implementation authority for a Section 112 standard or portion thereof. Situations under which the MPCA may relinquish delegation authority include, but are not limited to: amendment of the standard by EPA; resource constraints; and changes in EPA policy or interpretation. The MPCA shall provide EPA a reasonable period of time between the notice and the date that the MPCA relinquishes its delegation authority.
- IV. The MPCA shall be responsible for implementing and enforcing fully delegated Section 112 standards and the delegable general provisions in Minnesota. Such implementation and enforcement shall include, as appropriate:
- A. Distribution of initial notification forms to potentially affected sources;
 - B. Receiving initial notifications and compliance certifications from affected sources;
 - C. Issuing or revising Part 70 construction and/or operating permits for affected sources as needed to include Section 112 standards, described in part I of "Procedures for Delegation of Implementation and Enforcement Authority;"
 - D. Assuring compliance through implementation of the Part 70 construction and/or operating permits for those affected sources required to obtain permits.
- V. Delegation of the general provisions in Part 63 will be implemented according to the procedures in the September 14, 2000, *Federal Register* (65 FR 55810). Parts 63.1, 63.2, 63.3, 63.4, 63.5, 63.6, 63.7, 63.8, 63.9, 63.10, 63.11 and 63.14 have already been incorporated by reference into the MPCA's rules and EPA hereby delegates implementation and enforcement delegation of those provisions. The general provisions that are retained by EPA and will not be delegated are:
- A. The authority to add or delete pollutants from the list of hazardous air pollutants under Section 112(b);
 - B. The authority to add source categories to or delete source categories from the federal source category list established under Section 112(c)(1) or to subcategorize categories on the federal source category list after proposal of a relevant emission standard;
 - C. The authority to revise the source category schedule established under Section 112(c) by moving a source category to a later date for promulgation; and
 - D. Any other authorities determined to be non-delegable by EPA.
- VI. Until the MPCA obtains the authority necessary to enforce Section 112 standards, EPA

shall initiate enforcement action when enforcement is in the best interest of the state, the general public, or EPA, or when delayed enforcement would impose an undue level of risk on the general public and/or the environment. After EPA delegates enforcement authority to the MPCA, nothing in this MOA or in any delegation of a NESHAP standard or requirement shall prohibit or limit EPA from enforcing any applicable emission standard or requirement under Section 112, at any time, including enforcement by EPA where the state has taken an enforcement action against a particular source for violations of Section 112.

- VII. The MPCA will obtain concurrence from EPA on any matter involving the interpretation of Section 112 of the Act or 40 CFR Part 61 and 63 to the extent that implementation, administration or enforcement by those sections have not been covered by EPA determination or guidance.

Upon signature of this MOA, the implementation and enforcement of all existing section 112 standards, which have been incorporated into the Minnesota Rules and the delegable general provisions listed in Section IV of this Memorandum that have been incorporated into Minnesota Rules, are delegated to the state of Minnesota as set forth above. This delegation process excludes standards as they apply to non-Part 70 sources and excludes Section 112(i). The above agreement is effective when signed and may be modified upon mutual agreement by the MPCA and EPA. Nothing in this agreement shall be construed to restrict in any way the authority of either EPA or the MPCA to fulfill its responsibilities under state or federal law.

James L. Warner

James L. Warner, Director
Majors and Remediation Division
Minnesota Pollution Control Agency

Date: Augt 7, 2004

S. R. Shultz

Steve Roshblatt, Director
Air and Radiation Division
U.S. Environmental Protection Agency

Date: 7/15/2005

APPENDIX A
Section 112 Standards
National Emissions Standards for Hazardous Air Pollutants
Already Incorporated By Reference
Into State Rule at the Time of EPA's July 2002 Federal Register Notice

Promulgated NESHPAP	Subpart	Promulgation Date	Minn. Rule
Dry Cleaning	M	09/22/1993	7011.7100
Coke Oven Batteries	L	10/27/1993	7011.7080
Synthetic Organic Chemical (HON)	F	04/22/1994	7011.7040(A)*
Synthetic Organic Chemical (HON)	G	04/22/1994	7011.7040(B)*
Synthetic Organic Chemical (HON)	H	04/22/1994	7011.7060(A)
Synthetic Organic Chemical (HON)	I	04/22/1994	7011.7060(B)
Industrial Cooling Towers	Q	09/08/1994	7011.7160
Halogenated Solvent Cleaning (degreaser)	T	12/02/1994	7011.7200
Commercial Sterilizers	O	12/06/1994	7011.7140
Gasoline Distribution	R	12/14/1994	7011.7180
Magnetic Tape	EE	12/15/1994	7011.7300
Chromium Electroplating	N	01/25/1995	7011.7120
Epoxy/Polyamide Resins, Group II	W	03/08/1995	7011.7420(B)
Secondary Lead Smelters	Z	06/23/1995	7011.7240
Refineries I (misc. vents, tanks, leaks, etc.)	CC	08/18/1995	7011.7230
Aerospace Manufacturing/Rework	GG	09/01/1995	7011.7320
Marine Vessel Loading	Y	09/19/1995	7011.7260
Wood Furniture	J	12/07/1995	7011.7340
Shipbuilding & Ship Repair	II	12/15/1995	7011.7360
Printing & Publishing	KK	03/30/1996	7011.7380
Off-Site Waste and Recovery	DD	07/01/1996	7011.7400(A)
Tanks - Level I	OO	07/01/1996	7011.7400(B)
Containers	PP	07/01/1996	7011.7400(C)
Surface Impoundments	QQ	07/01/1996	7011.7400(D)
Individual Drain Systems	RR	07/01/1996	7011.7400(E)
Oil-Water Separators & Organic-Water Separators	VV	07/01/1996	7011.7400(F)
Elastomerics Resins, Group I	U	09/05/1996	7011.7420
Thermoplastic Resins, Group IV	JJ	09/12/1996	7011.7420(D)

*Not listed in July 23, 2002, *Federal Register* Notice

APPENDIX B
Section 112 Standards
National Emissions Standards for Hazardous Air Pollutants
Incorporated By Reference Into State Rule on June 1, 2004

Promulgated NESHAP	Subpart	Promulgation Date	Min. Rule
Primary Aluminum	LL	10/07/1997	7011.7660
Pulp & Paper I & II (Pulping, Mechanical)	S	04/15/1998	7011.7700(A)
Pharmaceuticals	GGG	09/21/1998	7011.7520
Flexible Polyurethane Foam Production	III	10/07/1998	7011.7480
Fermalloys	XXX	05/20/1999	7011.7460
Polyether Polyols	PPP	06/01/1999	7011.7620
Mineral Wool	DDD	06/01/1999	7011.7520
Primary Lead	TTT	06/04/1999	7011.7235
Phosphoric Acid	AA	06/10/1999	7011.7600(A)
Phosphate Fertilizers	BB	06/10/1999	7011.7600(B)
Wool Fiberglass	NNN	06/14/1999	7011.7730
Portland Cement	LLL	06/14/1999	7011.7640
Oil & Natural Gas production	HH	06/17/1999	7011.7290(A)
Natural Gas Transmission & Storage	HHH	06/17/1999	7011.7290(B)
Steel Pickling - HCl Process	CCC	06/22/1999	7011.3670
Pesticides Active Ingredient	MM	06/23/1999	7011.7360
Generic (acetate, acrylic, HF, polycarbonate)	YY	06/29/1999	7011.7030
Hazardous Waste Combustors	EEE	09/30/1999	7011.7410
Publicly Owned Treatment Works	VVV	10/26/1999	7011.7680
Amino/Phenolic Resins, Group III	OOO	01/29/2000	7011.7420(C)
Secondary Aluminum	RRR	03/23/2000	7011.7665
Pulp & Paper II, Recovery Combustion	MM	01/13/2001	7011.7700(B)
Vegetable Oil Production	OGGG	04/12/2001	7011.7640
Nutritional Yeast	CCCC	05/21/2001	7011.7780
Boat Manufacturing	VVVV	08/22/2001	7011.7370
Leather Finishing	TTTT	02/27/2002	7011.7760
Refineries II (cracking, reforming, sulfur)	UUU	04/11/2002	7011.7280(B)
Wet-Formed Fiberglass Mat	HHHH	04/11/2002	7011.7720
Metal Coil	SSSS	06/10/2002	7011.7905
Cellulose Products	UUUU	06/11/2002	7011.7740
Primary Copper	QQQ	06/12/2002	7011.7650
Rubber Tire	XXXX	07/09/2002	7011.7860
Polyvinyl Chloride	I	07/10/2002	7011.7820
Generic (carbon, cyanide, ethylene, spandex)	YY	07/12/2002	7011.7030
Large Appliances	NNNN	07/23/2002	7011.7900
Friction Materials	QQQQQ	10/18/2002	7011.7880
Paper & Other Wbs	JJJ	12/04/2002	7011.7385

APPENDIX C
Section 112 Standards
National Emissions Standards for Hazardous Air Pollutants
Not Yet Incorporated By Reference In to State Rule

Promulgated NESHAP	Subpart	Promulgation Date	Mon. Rule
Site Remediation	GGGGG	10/03/2003	n/a
Primary Magnesium Refining	TTTTT	10/10/2003	n/a
Tourmalite Iron Ore Processing	RRRRR	10/30/2003	n/a
Miscellaneous Organic Chemical (MON)	FFFFF	11/10/2003	n/a
Metal Can	KKKKK	11/13/2003	n/a
Miscellaneous Coating Manufacturing	HHHHH	12/11/2003	n/a
Miscellaneous Metal Parts and Products	MMMMM	01/02/2004	n/a
Lime Manufacturing	AAAAA	01/05/2004	n/a
Organic Liquids Distribution	EEEEEE	02/02/2004	n/a
Combustion Turbines	YYYYY	03/05/2004	n/a
Plastic Parts	PPPPP	04/19/2004	n/a
Iron and Steel Foundries	EEEEEE	04/22/2004	n/a
Reciprocating Internal Combustion Engines	ZZZZZ	06/15/2004	n/a
Plywood and Composite Wood Products	DDDDD	07/29/2004	n/a